In the Claims:

Please cancel claims 25-37 without prejudice and without disclaimer.

Please add claims 49-62.

REMARKS

Examiner Interview

A telephonic interview was conducted on September 1, 2004 with participants Examiner Georgia L. Helmer, Primary Examiner Phuong T. Bui and Applicants' Representative, Barbara Kitchell.

Claim language was discussed to address proper description for inserting sequences into a plant with subsequent removal. Also discussed was the scope of the claims with concurrence that the submitted working examples were supportive of enablement. Applicants' representative indicated that consideration would be given to amendments that would address the issues, particularly clarification of preamble language.

REJECTIONS UNDER 35 U.S.C. §112

Claims 25-37 are rejected under 35 U.S.C. § 112, second paragraph as indefinite for failing to particularly point out and claim the subject matter regarded as the invention.

In claim 25, the term "gene" cassette is objected to as not properly descriptive and as implying more than what the cassette actually contains. The term "a DNA of interest" was suggested. After consideration, Applicants have replaced the claim to more clearly define the construct; in particular they have employed the terms "transgene" and "cassette" in a manner believed to clarify the language.

In claim 25, in line 5, Applicants agree that the reference to the first and second DNA recombinase recognition sites is confusing. After consideration of the Examiner's suggestion, Applicants have

amended to more clearly define the site as the FRT/ LoxP excision site. Applicants believe that this clearly refers to the sequences that bind respectively the FLP or Cre polypeptides. This amendment is believed to also address the objection to "DNA excision sequences" as not distinguished from non-excision sequences. The new set of claims also addresses the concerns with use of "DNA recombinase excision sequence".

The term "stimulation" in claim 25 is claimed to have no antecedent basis. Applicants' substitute claims are believed to address this issue.

The "causing excision" term in claim 25 is asserted to be confusing with regard to what is causing the excision. Applicants believe that when the claim (new claim 49) is read as a whole and in light of the recognized function of the recombinases and their associated excision sites, the meaning is clear. Applicants would appreciate any additional guidance should the examiner believe that additional clarity is required.

Claims 25, 34 and 25 are rejected as not clearly identifying what DNA confers a trait of interest. Applicants believe that within the context of the substitute claims and the accepted meaning of "transgene", the trait of interest "comprising a transgene that expresses a protein conferring a trait of interest," is neither vague nor unclear.

Claims 25-37 are rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement for FLP, Cre, R, Gin, PIV, FimB, C31, KW, SSV, IS1110/S492, TnpX, AG, AGL5, Bcp1, LAT52, PLENA, SIM, avrRp2 and alc.

As requested by the Examiner, Applicants respectfully point out that written description is provided for the recombinases FLP, Cre, R, Gin, PIV, FimB, C31, KW, SSV, IS1110/S492, TnpX, in the specification on page 27, [0058], lines 4-5 and for the promoters AG, AGL5, Bcp1, LAT52, PLENA, SIM, avrRp2 and alc at [0059], line 6.

Claims 25-37 are rejected under 35 U.S.C. § 112, first paragraph as lacking enablement in view of the broadness of the claims. The *Wands* factors are recited as relevant in assessing scope of the claimed invention.

Applicants believe that the method will apply to a wide range of recombinases and genes that confer selected plant traits, as demonstrated with model constructs employing FRT and Cre and the respective excision sites with which they interact. The Examiner notes the problems previously experienced with low excision frequencies and unpredictable recombination; however, the working examples brought to the examiner's attention previously are believed to provide evidence that applicants have solved this problem.

In the interest of proceeding the case to allowance, applicants have more closely defined the claims to include identification of the particular recombinases, Cre and FLP, as used in the model examples; however, Applicants do not wish to limit the scope of the invention to these two recombinases and reserve the right to broaden the claims or file a continuation application at a later time to include other recombinases such as those described in the specification.

New Claims

The new claims, 49-62, do not include new matter and are descriptively supported throughout the specification and in the Figures. Additionally, the constructs are believed to be fully supported by the working examples previously submitted in support of the claimed invention.

New claim 49 is in substance a replacement for claim 25, incorporating language to more clearly define the import of the method as set forth in the preamble of claim 25 and to clarify the arrangement of the genetic material in the cassette.

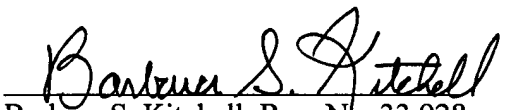
The term "transient" is found in several places in the specification, including [0019] where reference is made to "transiently active promoters." The specification also refers to "temporal and spatial control of the activation of the excision mechanism is achieved" [0032]. Applicants believe

that use of the term "transient" is supported within the context of the detailed description provided in the specification.

Conclusion

It is believed that the claims are in condition for allowance and reconsideration is respectfully requested. Should the Examiner have any questions, comments or suggestions, the undersigned requests a telephone conference at the number provided.

Respectfully submitted,



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